IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2788 OF 2006
IN
FIRST APPEAL NO.1803 OF 2006

Jindal Iron & Steel Company Ltd. ...Applicant
Vs.
Murbad Gas Services ...Respondent

Shri V.P. Sawant for the Applicant.
Shri D.B. Patil for the Respondent.

CORAM : A. S. OKA, J.
DATE : AUGUST 07, 2006.

P.C.:

1. Leave to amend. Rule. Advocate for the Respondent waives service. Taken up for hearing forthwith. Heard the learned counsel appearing of the parties. The learned counsel for the Applicant has invited my attention to the roznama of the suit. he submitted that the learned Trial Judge allowed the Respondent-Plaintiff to file a document on 30th August, 2005 without notice to the Advocate appearing for the Applicant. He submitted that unconditional leave was granted in favour of the Applicant to defend the suit. He submitted that therefore, unconditional stay to execution of the money decree deserves to be granted. This prayer is opposed by the learned counsel appearing for the Respondent.

2. Well settled rule of law is that a money decree cannot be stayed unless the amount covered by the money decree is deposited. Infact, under sub-rule 3 of Rule 1 of Order XLI of the Code of Civil Procedure, 1908, power is vesting in the court to direct deposit of the decretal amount even if the Applicant does not apply for grant of stay.

3. Perusal of the roznama shows that on 31st January, 2005 order was passed in favour of the Applicant granting unconditional leave. The suit was thereafter kept on 13th February, 2005, 05th March, 2005, 25th April, 2005, 20th June, 2005, 16th July, 2005, 23rd August, 2005 and 24th August, 2005. The Applicants did not appear before the court and failed to file written statement. Considering these aspects, no case is made out for making a departure from the normal rule. Moreover, the claim of the Respondent-Plaintiff arises out of a commercial transaction between the parties.

4. Hence, Civil Application disposed of by passing following order:

(i) Rule is made absolute in terms of prayer clause 8(i) subject to condition of the Applicant depositing the entire amount due and payable as per the impugned judgment and decree with the Trial Court within period of ten weeks from today.

(ii) If the amount is not deposited within the stipulated time of ten weeks, ad-interim relief granted will stand vacated without further reference to the court.

(iii) If the amount is deposited within the stipulated time, the Respondent will be entitled to withdraw the same subject to furnishing bank guarantee of any nationalised bank for the entire amount to the satisfaction of the Trial Court. The Trial Court will hear the Applicant before accepting the bank guarantee.

(iv) If the Respondent fails to furnish bank guarantee within period of four months from the

date of deposit of the amount of the Applicant, the Trial Court will invest the said decretal amount in fixed deposit initially for a period of three years and thereafter, the fixed deposit will be renewed from time to time on yearly basis till final disposal of the Appeal.

(v) No orders as to costs.

JUDGE